

## **Proposed 940 CMR 7.00: Debt Collection Regulations**

### **Section**

7.01: Purpose Of Regulations

7.02: Scope

7.03: Definitions

7.04: Contact with Debtors

7.05: Contact With Persons Residing In The Household Of A Debtor

7.06: Contact With Other Persons Regarding a Debt

7.07: General Unfair or Deceptive Acts Or Practices

7.08: Validation of Debts

7.09: Relation To Other Laws

7.10: Preemption By Federal Law

### **7.01: Purpose Of Regulations**

The purpose of 940 CMR 7.00 is to establish standards, by defining unfair or deceptive acts or practices, for the collection of debts from persons within the Commonwealth of Massachusetts.

### **7.02: Scope**

940 CMR 7.00 apply only to the collection of debts, as defined herein, and no conduct which is not the collection of debts or any part thereof is affected.

### **7.03: Definitions**

**Communication** or **communicating** means conveying information directly or indirectly to any person through any medium excluding nonidentifying communications.

**Creditor** means any person and his agents, servants, employees, or attorneys engaged in collecting a debt owed or alleged to be owed to him by a debtor and shall also include a buyer of delinquent debt who either seeks to collect such debt directly or hires a third party or an attorney to collect such debt provided, however, that a person shall not be deemed to be engaged in collecting a debt, for the purpose of 940 CMR 7.00, if his activities are solely for the purpose of serving legal process on another person in connection with the judicial enforcement of a debt.

**Debt** means money or its equivalent which is, or is alleged to be, owing under a single account as a result of a purchase, lease, or loan of goods, services, or real or personal property, for personal, family or household purposes or as a result of a loan of money which is obtained for personal, family or household purposes whether or not the obligation has been reduced to judgment.

**Debtor** means a natural person, or his guardian, administrator or executor, present or residing in Massachusetts who is allegedly personally liable for a debt.

**Nonidentifying communication** means any communication with any person other than the debtor in which the creditor does not convey any information except the name of the creditor and in which the creditor makes no inquiry other than to determine a convenient time and place to contact the debtor.

**Person** means any natural person, corporation, trust, partnership, incorporated or unincorporated association and any other legal entity; provided, however, that if a creditor comprises or employs more than one natural person, all such individuals shall be deemed to be one and the same "person" with respect to any debt owed or alleged to be owed to such a creditor.

**Time-Barred debt** means any debt that is not enforceable in a judicial proceeding because the applicable statute of limitation has run.

#### **7.04: Contact With Debtors**

(1) It shall constitute an unfair or deceptive act or practice for a creditor to contact a debtor in any of the following ways:

- (a) Threatening to sell or assign to another the obligation of a debtor with an attending representation or implication that the result of such sale or assignment would be that a debtor would lose any defense to the claim or would be subjected to harsh, vindictive or abusive collection attempts;
- (b) Threatening that nonpayment of a debt will result in:
  - 1. Arrest or imprisonment of any debtor; or
  - 2. Seizure, garnishment, attachment, or sale of any property or wages of any person or the taking of other action requiring judicial order without informing the debtor that there must be in effect a judicial order permitting such action before it can be taken or unless such action is lawful and the creditor intends to take such action; or
  - 3. Any action that cannot legally be taken or that is not intended to be taken.
- (c) Using profane or obscene language;
- (d) Communicating by telephone without disclosure of the name of the business or company of the creditor and without disclosure of the first and last name of the individual making such communication or a first name and a personal identifier code established by such creditor that the creditor may use to identify the person making such communication;

- (e) Causing expense to any debtor in the form of long distance or collect telephone calls, text messaging, download fees, data usage fees, or other similar charges, except the creditor may place non-collect telephone calls to the debtor's place of residence, cellular telephone, or other telephone number provided by the debtor as his/her personal telephone number, subject to the limitations set forth in Section 7.04(1)(f);
- (f) Initiating a communication with any debtor via telephone, either in person or via text messaging or recorded audio message, in excess of two such communications in each seven-day period to either the debtor's residence, cellular telephone, or other telephone number provided by the debtor as his/her personal telephone number and two such communications in each 30-day period other than at a debtor's residence, cellular telephone, or other telephone number provided by the debtor as his/her personal telephone number, for each debt, provided that for purposes of this section, a creditor may treat any billing address of the debtor as his place of residence;
- (g) Placing telephone calls at times known to be times other than the normal waking hours of a debtor, or if normal waking hours are not known, at any time other than between 8:00 a.m. and 9:00 p.m.;
- (h) Placing any telephone calls to the debtor's place of employment if the debtor has made a written or oral request that such telephone calls not be made at the place of employment, provided, that any oral request shall be valid for only ten days unless the debtor provides written confirmation postmarked or delivered within seven days of such request. A debtor may at any time terminate such a request by written communication to the creditor;
- (i) Failing to send the debtor the following notice in writing within 30 days after the first communication to a debtor at his place of employment regarding any debt, provided that a copy of the notice shall be sent every six months thereafter so long as collection activity by the creditor on the debt continues and the debtor has not made a written request as described in 940 CMR 7.04(1)(h).

**NOTICE OF IMPORTANT RIGHTS**

**YOU HAVE THE RIGHT TO MAKE A WRITTEN OR ORAL REQUEST THAT TELEPHONE CALLS REGARDING YOUR DEBT NOT BE MADE TO YOU AT YOUR PLACE OF EMPLOYMENT. ANY SUCH ORAL REQUEST WILL BE VALID FOR ONLY TEN DAYS UNLESS YOU PROVIDE WRITTEN CONFIRMATION OF THE REQUEST POSTMARKED OR DELIVERED WITHIN SEVEN DAYS OF SUCH REQUEST. YOU MAY TERMINATE THIS REQUEST BY WRITING TO THE CREDITOR.**

- (j) Visiting the household of a debtor at times other than the normal waking hours of such debtor, or if normal waking hours are not known, at any time other than between 8:00 a.m. and 9:00 p.m., provided however that in no event shall such visits, initiated by the creditor, exceed one in any 30-day period for each debt, excluding visits where no person is contacted in the household, unless a debtor consents in writing to more frequent visits, provided, further, that at all times the creditor must remain outside the household unless expressly invited inside by such debtor; and provided further, that visits to the household of a debtor which are solely for the purpose of repossessing any collateral or property of the creditor (including but not limited to credit cards, drafts, notes or the like), are not limited under this section;
- (k) Visiting the place of employment of a debtor, unless requested by the debtor, excluding visits which are solely for the purpose of repossessing any collateral or property of the creditor;
- (l) Confronting or communicating in person with a debtor regarding the collection of a debt in a public place, excluding courthouses, the creditor's place of business, other places agreed to by a debtor, offices of an attorney for the creditor, or places where the conversation between the creditor and a debtor cannot be reasonably overheard by any other person not authorized by the debtor;
- (m) Stating that the creditor will take any action, including legal action, which in fact is not taken or attempted on such debtor's account, unless an additional payment or a new agreement to pay has occurred within the stated time period. For purposes of this section, the time period in connection with such statement shall be presumed to expire 14 days from the date the statement is made, unless otherwise indicated by the creditor;

(2) Subject to applicable law, after notification from an attorney for a debtor that all contacts relative to the particular debt in question should be addressed to the attorney, a creditor may contact the debtor only to perfect or preserve rights against the debtor or collateral securing the debt;

(3) 940 CMR 7.04(1)(j) and (1)(m) and (2) shall not apply to telephone, gas and electric utility companies regulated by [M.G.L. c. 164](#) and the Department of Public Utilities.

#### **7.05: Contact With Persons Residing In The Household Of A Debtor**

(1) A creditor may assume that all contacts directed to the debtor's household are received either by the debtor or persons residing in the household of the debtor unless the creditor knows or should know information to the contrary.

(2) It shall constitute an unfair or deceptive act or practice for a creditor to imply the fact of a debt, orally or in writing, to persons who reside in the household of a debtor, other than the debtor.

(3) It shall constitute an unfair or deceptive act or practice for a creditor to contact or threaten to contact persons who reside in the household of a debtor, other than the debtor, in any of the following ways:

- (a) Using profane or obscene language;
- (b) Placing telephone calls, disclosing the name of the business, or company of the creditor, unless the recipient expressly requests disclosure of the business or company name;
- (c) Causing expense to any such person in the form of collect or long distance telephone calls, text messaging, download fees, data usage fees or other similar charges;
- (d) Engaging any such person in non-identifying communication via telephone with such frequency as to be unreasonable or to constitute harassment to such person under the circumstances, and engaging any person in communications via telephone, initiated by the creditor, in excess of two calls in each seven-day period at a debtor's residence and two calls in each 30-day period other than at a debtor's residence, for each debt;
- (e) Placing telephone calls at times known to be times other than the normal waking hours of the person called, or if normal waking hours are not known, at any time other than between 8:00 a.m. and 9:00 p.m.;
- (f) Visiting the place of employment of any such person, unless requested by such person
- (g) Confronting or communicating in person with any such person regarding the collection of a debt in a public place, excluding courthouses, the creditor's place of business, other places agreed to by the person, offices of the person's attorney or of the attorney for the creditor or debtor, or places where the conversation between the creditor and such person cannot reasonably be overheard by anyone not authorized by such person;
- (h) Using language on envelopes or on any other printed or written materials, except materials enclosed in sealed envelopes, indicating or implying that the communication relates to the collection of a debt, which in the normal course of business may be received or examined by any such person residing in the household of a debtor;

(4) Nothing in 940 CMR 7.05 shall prohibit any contact required by law to be made by a creditor or attorney acting on his behalf engaged in collection activities, including notices required prior or subsequent to repossession.

**7.06: Contact with Other Persons Regarding a Debt**

The following shall apply to contact with persons not covered by 940 CMR 7.04 and 7.05:

(1) It shall constitute an unfair or deceptive act or practice for a creditor to contact or threaten to contact persons in connection with a debt, in any of the following ways:

- (a) Implying the fact of the debt to any such person;
- (b) Using language on envelopes or any other printed or written materials, except materials enclosed in sealed envelopes, indicating or implying that the contact relates to the collection of a debt, which in the normal course of business, may be received or examined by persons other than the debtor;
- (c) Causing expense to any person in the form of collect or long distance telephone calls, text messaging, download fees, data usage fees or other similar charges;

(2) The following contacts shall not be deemed unlawful:

- (a) Any contact with any such persons which results solely from efforts to contact the debtor at the debtor's place of residence or at places other than a debtor's residence via telephone pursuant to 940 CMR 7.04(1)(f), provided the creditor limits the contact to disclosing only the first and last name of the individual making such communication on behalf of the creditor or a first name and unique personal identifier established by the creditor to identify the person making such communication, unless the recipient expressly requests the disclosure of the business or company name; and provided further, that with respect to contacts made at the debtor's place of employment, the debtor has not made a request pursuant to 940 CMR 7.04(1)(h) that such contact not be made;
- (b) Any contact with any such persons made for the purpose of and limited to determining the current location of the debtor, provided the creditor, after making reasonable attempts to locate the debtor, does not have correct information as to the debtor's current residence or location and provided further, that the creditor reasonably believes that the earlier response of such person, if any, is erroneous or incomplete and that such person now has correct or complete locational information, and in no event shall such contacts exceed three per such person in any 12-month

period for each debt. The creditor in making said contacts may reveal only the first and last name of the individual making such communication on behalf of the creditor or a first name and unique personal identifier established by the creditor to identify the person making such communication, unless the recipient expressly requests the disclosure of the business or company name. Any contacts at the debtor's place of employment, made pursuant to 940 CMR 7.06, shall be lawful, unless a request was made by the debtor, pursuant to 940 CMR 7.04(1)(h), that such contacts not be made;

- (c) Any contact with respect to such debt to any attorney or other person employing or employed by the creditor, or to any attorney employed by the debtor; to a consumer reporting agency; or, where there are actual negotiations or arrangements for assigning or purchasing or settling of accounts, to potential assignees or purchasers or the like; or to persons who have any interest in property securing all or part of the debt; or to any bona fide credit counseling agency not connected to the creditor and designated in writing by the debtor;
- (d) Any communication of the fact of such debt by an attorney involved in litigation in connection with such debt, or after a judgment on the debt has been entered by a court of competent jurisdiction;
- (e) Any contact required by law to be made by a creditor engaged in collection activities, including notices required prior or subsequent to repossession.

#### **7.07: General Unfair or Deceptive Acts Or Practices**

It shall constitute an unfair or deceptive act or practice to engage in any of the following practices to collect or attempt to collect any debt:

- (1) Any false representation that the creditor has information in his possession or something of value for the debtor;
- (2) Any knowingly false or misleading representation in any communication as to the character, extent or amount of the debt, or as to its status in any legal proceeding, provided, however, that an incorrect or estimated bill submitted by a gas or electric utility company regulated by M.G.L. c. 164, and the Department of Public Utilities shall not be prohibited by 940 CMR 7.07;
- (3) Any false or misleading representation that a creditor is vouched for, bonded by, affiliated with, or is an instrumentality, agency, or official of the state, federal or local government;
- (4) Any false or misleading representation that a creditor is an attorney or any other officer of the court;

- (5) The use, distribution or sale of any written communication which simulates, or which is falsely represented to be, or which otherwise would reasonably create a false impression that it was, a document authorized, issued or approved by a court, a government official or other governmental authority;
- (6) Any representation that an existing obligation of a debtor may be increased by the addition of attorney's fees, investigation fees, service fees, or any other fees or charges, if in fact such fees or charges may not legally be added to the existing obligation;
- (7) Any solicitation or obtaining of any written statement or acknowledgement in any form containing an affirmation of any obligation by a debtor who has been adjudicated bankrupt, without clearly and conspicuously disclosing the nature and consequences of such affirmation;
- (8) Any false, deceptive, or misleading representation, communication, or means in connection with the collection of any debt or to obtain information concerning a debtor;
- (9) Any false or misleading representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the debtor to:
- (a) lose any claim or defense to payment of the debt; or
  - (b) become subject to any practice prohibited by these regulations;
- (10) Any false or misleading representation or implication that the debtor committed any crime or other conduct in order to disgrace the debtor;
- (11) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false including, without limitation, the failure to communicate that a disputed debt is disputed;
- (12) Any false or misleading representation or implication that documents are legal processes;
- (13) Any false or misleading representation or implication that documents are not legal processes or do not require action by the debtor;
- (14) Any false or misleading representation or implication that a creditor operates or is employed by a consumer reporting agency;
- (15) Using any business, company or organization name other than the true name of the creditor's business, company or organization;



(16) The collection of any amount (including interest, fees, charges or expenses incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law;

(17) Requesting or demanding from a debtor a post dated check, draft, order for withdrawal or other similar instrument or method in payment for the debt or any portion thereof, or for a creditor to negotiate such instrument before the due date of the instrument;

(18) Taking or threatening to take any non-judicial action to effect dispossession or disablement of property if:

(a) there is no present right to possession of the property claimed as collateral through a court order or an enforceable security interest;

(b) there is no present intention to take possession of the property;

(c) the creditor knows or has reason to know that demands for payment and/or legal notices were not directed to the debtor's current address; or

(d) the property is exempt from seizure on execution because its value does not exceed the value for exemption set forth in M.G.L. c. 235, §34, or the property is otherwise exempt by law from such dispossession or disablement;

(19) Taking possession of or selling upon execution property that is exempt from seizure on execution because its value does not exceed the value for exemption set forth in M.G.L. c. 235, §34, or the property is otherwise exempt by law from such dispossession or disablement;

(20) Communicating with a debtor regarding a debt by postcard;

(21) Reporting to a consumer reporting agency on transactions or experiences with a debtor in a name other than that of the creditor;

(22) Failing to disclose the telephone number and office hours of the creditor on all written communications to the debtor;

(23) Requesting any information about the debtor or the debtor's accounts or assets other than information that is necessary for collection of the debt owed to the creditor;

(24) Collecting or attempting to collect from any person payment of any debt that the creditor knows or has reason to know is a time-barred debt, or seeking or obtaining from any person an admission, affirmation, acknowledgement of a new promise to pay, or any waiver of legal rights

or defenses with regard to any debt that the creditor knows or has reason to know is a time-barred debt, unless the creditor discloses the following information:

*“We are required by law to notify you that this debt may be unenforceable through a lawsuit because the time for filing suit has or may have expired. You are not required by law to sign any admission, affirmation or acknowledgement of, or new promise to pay the debt; or to make any payment on the debt; or to waive any rights with regard to the effect of the running of the applicable statute of limitation.”*

In the case of written communications, the disclosures required by this subsection shall be clear and conspicuous by appearing in a type which is a minimum of eight-point type and said disclosure shall be placed on the front page of the communication.

In the case of oral communications, the disclosures required by this subsection shall be made immediately before or immediately after the first statement requesting payment, or, if no request for payment is made, no later than immediately after reference to the debt is first made.

#### **7.08: Validation of Debts**

It shall constitute an unfair or deceptive act or practice for a creditor to fail to provide to a debtor or an attorney for a debtor within five business days of receipt of a request the following materials in the possession, custody, or control of the creditor regarding a debt:

- (1) All papers or copies of papers, including electronic records, which bear the signature of the debtor and which concern the debt being collected;
- (2) A ledger, account card, or similar record, whether paper or electronic, which reflects the date and amount of payments, credits, balances, and charges concerning the debt, including but not limited to interest, fees, charges or expenses incidental to the principal obligation which the creditor is expressly authorized to collect by the agreement creating the debt or permitted to collect by law.
- (3) The name and address of the original creditor, if different from the collecting creditor.
- (4) A copy of any judgment against the debtor.

A creditor shall provide such documentation by first-class mail to the debtor if the debtor makes such a request.

#### **7.09: Relation To Other Laws**

940 CMR 7.00 does not exempt any person from complying with existing laws or rules of professional conduct with respect to debt collection practices. 940 CMR 7.00 is not intended to supersede or in any way limit rights and protections provided to consumers under 14.6 CMR

13.00, the Health Safety Net Eligible Services Regulations. To the extent that any provision of 940 CMR 7.00 is specifically inconsistent with the Massachusetts Rules of Professional Conduct, as currently appearing in Supreme Judicial Court Rule 3:07 and then only to the extent of the inconsistency, 940 CMR 7.00 is not applicable. Provisions of 940 CMR 7.00 that contain language identical to provisions within 15 U.S.C. § 1692, *et seq.*, the Fair Debt Collection Practices Act, should be interpreted consistently with that Act.

#### **7.10: Preemption By Federal Law**

In the event any conflict exists between the provisions of 940 CMR 7.00 and the provisions of Federal statutes or regulations relating to the collection of debts, such Federal law shall control but only to the extent that such Federal law mandates actions or procedures prohibited by 940 CMR 7.00.

#### **REGULATORY AUTHORITY**

940 CMR 7.00: M.G.L. c. 93A, § 2(c).